REMARKS

Entry of the foregoing and favorable reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. Section 1.112, and in light of the remarks which follow, are respectfully requested.

By the present amendment, claims 26 to 29, 31, 35 to 42, 45 to 48 and 50 to 52 have been amended to further clarify the present invention. Claims 1 to 25 and 30, 32 to 34 have been cancelled. Support for the amended claims 26 and 35 may be found at page 12, lines 1 to 14. Claims 36, 39 and 41 have been respectively objected to for reciting the following informalities "further comprises", "SEQ ID NOs" and "encoding".

Claims 26 to 38, 41 to 44, 46, 47 and 50 to 52 were rejected under 35 U.S.C. §112, first paragraph as allegedly lacking written description.

In imposing this rejection, the Examiner deems that the specification does not provide literal support for the expression "a functional part of a PLA2s gene" in the application as filed. Applicants have amended claim 26. Applicants have deleted the expression "a functional part of a PLA2s gene" and inserted the expression "a sequence of said PLA2s gene comprising at least residues 51 to 61, 23 to 32, 148 to 155, 5 to 170 or 51 to 170 of SEQ ID NO.5".

Therefore, claim 26 is supported by the description and thus, withdrawal of the rejection is respectfully requested.

Claim 38 has been rejected under 35 U.S.C. §112, first paragraph, as lacking written description.

In imposing this rejection, the Examiner alleges that the description does not sufficiently describe parts of SEQ ID NO.7 which are used for conferring specificity of expression for chondrocytic cells and variants of SEQ ID NO.7 which retain functionality of said sequence.

This rejection is rendered moot since the amended claim 38 no longer recites parts and variants of SEQ ID NO.7.

In view of the above, withdrawal of this rejection under 35 USC §112, first paragraph is respectfully requested.

Claims 26 to 38, 40 to 48 and 50 to 52 have been rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite.

The Examiner considers that the expression "hybrid promoter" in claim 26 is indefinite and can have different interpretation. As noted by the Examiner, "hybrid promoter" means that the PPAR response element and PLA2s sequences are heterologous to one another and that the PPAR response element is not normally associated with PLA2s sequence.

Claim 26 has been amended by Applicants to recite that the PPAR response element and the PLA2s sequence are heterologous to

one another. The expression "a heterologous sequence from" has been added to claim 39 and supported by the description at least page 31, lines 9 to 17; page 32, lines 10 to 14; and page 4, lines 12 to 20 in the present application. The hybrid promoter such as tested in Figure 6 of the application has the following construct (DR)2 21, i.e., PPRE and the heterologous sequences sPLA2 and CAT gene interest. This recombinant promoter comprising heterologous sequences describes a product which is the result of human intervention rather than something that exists in nature. Therefore, the heterologous sequences PPRE and PLA2 of the construct, which are not naturally associated, provide the hybrid promoter of the invention.

In claims 27 to 38 the expression "the promoter" has been replaced by the expression "the hybrid promoter". Therefore, modified claims 27 to 38 have antecedent basis in claim 26 for the expression "the hybrid promoter".

In claim 36, the term "gene" has been replaced by the expression "a nucleic acid sequence" in response to the Examiner's rejection. Applicants deem that this amendment is supported on page 14, lines 20 to 24 of the present application. The term "gene" has been also replaced by the term "sequence" in the dependent claims of claim 36 i.e., claims 37 and 38.

In claim 37 the expression "specificity for the chondrocytic cells" has been replaced by the expression "specificity for

chondrocytic cells". It is believed that this expression obviates the Examiner's rejection.

In claim 39, the expression "a nucleic acid sequence" has been replaced by the expression "a nucleic acid". Thus, antecedent basis is provided for the expression "the nucleic acid according to " in claim 40.

In claim 42, the expression "said nucleic acid" has been replaced by the expression "said hybrid promoter". This amendment is done according to the expression "hybrid promoter" in claims 26 and 35 upon which claim 42 is dependent.

In claim 45, the expression "a nucleic acid according to claim 39" has been replaced by the expression "the isolated nucleic acid according to claim 39". Thus amended, claim 45 has antecedent basis for the expression "isolated nucleic acid according to claim 39" in claim 39.

In claim 48, the term "class" has been replaced by the term "group". Claim 48 recites a Markush group which is traditionally recited as "group consisting of".

Therefore, in view of the above, withdrawal of this rejection is respectfully requested.

Claims 39 and 50 to 52 have been rejected under 35 U.S.C. § 101 on the alleged grounds that the claimed invention was directed to non-statutory subject matter. This rejection has been obviated by addition of the following expressions "an isolated

nucleic acid" and "a isolated cell" respectively in claims 39 and 50 to 52.

In view of the above, withdrawal of this rejection is respectfully requested.

Claim 39 has been rejected under 35 U.S.C. § 102 (a) as being anticipated by Couturier et al. (J. Biol. Chemistry, August 1999, vol.274, No.33, pages 23085-23093). This rejection is respectfully traversed.

The subject matter of claim 39 now relates to the nucleic acid sequence SEQ ID NO.1, 2, 3, 4 and 5. Applicants have amended claim 39 and have deleted the term "functional variant".

Couturier et al. disclose the induction of type II PLA2 gene by interleukin-1β said induction requires activation of the NFκB pathway and cytosolic PLA2/PPAR pathway. However, the publication of Couturier et al. teaches neither the SEQ ID NO.5 nor SEQ ID NOS. 1, 2, 3, 4 corresponding to the PPAR response element.

Therefore, in view of the above, Applicants believe that Couturier et al. fail to disclose or suggest the claimed invention.

Claim 39 has been rejected under 35 U.S.C. § 102 (e) as being anticipated by Evans et al. (US Patent No. 6,413,994). This rejection is respectfully traversed.

Evans et al. disclose a class of compounds which are capable of modulating processes mediated by peroxisome proliferator

activated receptor-gamma (PPAR-γ). This document also describes a peroxisome proliferator activated receptor response element (PPRE) containing at least one or further copies of a minimal sequence CAAGGTCA. This minimal sequence can optionally be flanked by additional residues.

Thus, the subject matter of claim 39 relates to the nucleic acid sequence SEQ ID NO.1, 2, 3, 4 and 5. Moreover, Applicants have amended claim 39 and have deleted the term "functional variant". Applicants submit that PPRE disclosed by Evans et al. are distinct from the nucleic acid sequence of SEQ ID Nos. 1, 2, 3 and 4 such as described in the sequence listing of the present application.

Therefore, Evans et al. do not anticipate the subject matter of claim 39, thus withdrawal of this rejection is respectfully requested.

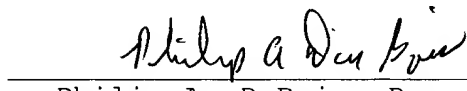
From the foregoing, favorable action in the form of a Notice of Allowance is respectfully requested and such action is earnestly solicited.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



Philip A. DuBois, Reg. No. 50,696
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

PD/fb